

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

98 JUN -2 PM 3:14 *phlo*

UNITED STATES OF AMERICA,

Plaintiff,

vs

Criminal Number 98-184-MV

EDUARDO BERNAL,  
RICARDO MENDEZ and  
CAROLINA AYALA DOMINGUEZ,

Defendants.

**DEFENDANTS' JOINT MOTION TO VACATE TRIAL SETTING**

COME NOW the Defendants Eduardo Bernal, Ricardo Mendez and Carolina Ayala Dominguez, by and through their respective attorneys Billy R. Blackburn, Thomas J. Clear, III and Peter Giovannini, and respectfully request this Court to vacate the trial setting of June 10, 1998, before Chief Judge John E. Conway in Las Cruces, New Mexico. As grounds in support, the Defendants state as follows:

1. On or about March 18, 1998, the Defendants Eduardo Bernal, Ricardo Mendez and Carolina Ayala Dominguez were charged by indictment in the United States District Court for the District of New Mexico with one count of conspiracy to possess with intent to distribute 500 grams or more of a mixture and substance containing detectible amounts of cocaine and one count of actual possession with intent to distribute more than 500 grams of cocaine in violation of 21 U.S.C. Section 846, 21 U.S.C. Section 841(a)(1) and 21 U.S.C. Section 841(b)(1)(B).

2. The Defendant Eduardo Bernal was arraigned before U.S. Magistrate

Leslie Smith in Las Cruces on or about April 9, 1998. The Defendant Carolina Ayala Dominguez was arraigned on April 10, 1998, before U.S. Magistrate Leslie Smith in Las Cruces. The Defendant Ricardo Mendez was arraigned in Albuquerque on April 17, 1998, before U.S. Magistrate Richard L. Puglisi.

3. The Defendant Carolina Ayala Dominguez was originally represented by the Federal Public Defender in Las Cruces. However, based upon the alleged conflict of interest, attorney Peter Giovannini was appointed to represent Ms. Dominguez. Mr. Giovannini recently entered his appearance in this case and obviously, needs an additional period of time to complete investigation and file appropriate motions. At the same time, all other parties still need an additional period of time to investigate all matters and file appropriate motions.

4. Attorney for Defendant Eduardo Bernal, namely Billy R. Blackburn, has a conflict as it relates to the trial setting of June 10, 1998. Said attorney is the attorney of record in the case entitled *State of New Mexico vs Anthony Macias, CR SF 96-451(CR)*. The *Macias* case is pending before Judge James A. Hall in the First Judicial District in Santa Fe, New Mexico. Mr. Macias is charged with an act that allegedly occurred on October 23, 1995. Mr. Macias was indicted on May 3, 1996. The case originally proceeded to trial in December 1997, however, a mistrial was declared. The case was rescheduled by Judge Hall for trial commencing June 9, 1998. A Trial Scheduling Order was filed on March 31, 1998. Attached hereto as Exhibit A is a copy of the Trial Scheduling Order relating to Mr. Macias' case scheduled to commence jury selection on June 9, 1998, at 8:30 a.m. It is anticipated that Mr. Macias' trial will last

three to four days.

5. Attorney Billy R. Blackburn has filed a Notice of Unavailability in the above-entitled and numbered cause indicating that he will be unavailable from June 17, 1998, through July 1, 1998.

6. No prejudice will occur to any party as a result of the granting of this motion. Furthermore, pursuant to 18 U.S.C. Section 3161(h)(8)(A), all the time from the filing of the Defendants' motion until the beginning of trial shall be excluded for the purpose of the Speedy Trial Act and the ends of justice are best served by granting this continuance.

7. Assistant U.S. Attorney Thomas English has been contacted concerning this motion and concurs in the relief requested herein.

WHEREFORE, for the above stated reasons, the Defendants respectfully request this Court to vacate the trial setting of June 10, 1998, before Chief Judge John E. Conway in Las Cruces, New Mexico.

Respectfully submitted,

**BILLY R. BLACKBURN**

Attorney for Defendant

Eduardo Bernal

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**THOMAS J. CLEAR, III**

Attorney for Defendant

Ricardo Mendez

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**PETER GIOVANNINI**

Attorney for Defendant

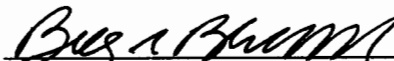
Carolina Ayala Dominguez

648 N. Alameda Blvd.

Las Cruces, New Mexico 88005

(505) 524-0224

BY



BILLY R. BLACKBURN

I HEREBY CERTIFY that a  
true and correct copy of  
the foregoing pleading was  
mailed/delivered to the following  
this 2nd day of June, 1998.


Thomas English

Assistant U.S. Attorney

PO Box 607

Albuquerque, New Mexico 87103

BY



BILLY R. BLACKBURN

FIRST JUDICIAL DISTRICT COURT  
STATE OF NEW MEXICO  
COUNTY OF SANTA FE

NO. SF 96-451(CR)

STATE OF NEW MEXICO,

Plaintiff,

vs.

ANTHONY MACIAS,

Defendant.

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APR 02 1998  
ENDORSED

MAR 31 1998  
FIRST JUDICIAL DISTRICT COURT  
SANTA FE, NEW MEXICO  
COUNTY OF SANTA FE  
Santa Fe, New Mexico 87403  
John T. Sullivan  
Court Administrator/Deputy Court Clerk

mp

**TRIAL SCHEDULING ORDER**

The Court herewith establishes the following schedule in this case:

**1. Pre-Trial Motions**

All motions shall be filed not later than forty-five (45) days after arraignment, unless otherwise ordered by the Court. Motion hearing will be set on request of either party.

**2. Pre-Trial Hearing**

The Pre-Trial Hearing authorized by SCRA 1986, 5-603 is set for **3:00 pm, May 11, 1998**. If the Defendant has been released on bond, he or she must be present for this hearing. Defendants in custody need not be transported for this hearing unless either party believes the Defendant's presence is necessary.

**3. Docket Call**

Docket call for this case is set for **8:15 am, June 1, 1998**. The Defendant is not required to attend this hearing.

**4. Trial**

The Trial in this matter is set for **8:30 am, June 9, 1998**, at which time the attorneys and the Defendant must appear for jury selection and case scheduling.




**5. Jury Instructions**

The State and the Defendant(s) shall submit proposed jury instructions immediately prior to opening statements. The parties may supplement the proposed jury instructions at the close of the evidence to address any unexpected matters that arise during the course of trial.

**6. Rule Date**

The Rule 5-604 date for trial in this case is **June 17, 1998**.

  
\_\_\_\_\_  
JAMES A. HALL  
DISTRICT JUDGE

State's Attorney: **Angela Pacheco**

Attorney for Defendant: **Billy Blackburn**